2.2 The Nature and Sources of the UK Constitution

EDEXCEL 9PL0 · about 75 minutes · Write-in edition

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. Short-answer items require concise, accurate sentences. For levels-marked extended questions write a sustained developed response using precise terminology and accurate factual detail. Allocate time sensibly: about 40 minutes for the two 30-mark questions combined, 35 minutes for the remaining questions, and 15 minutes checking work.

1 Using the two extracts below about the uncodified constitution, analyse how they would support and challenge the view that an uncodified constitution is flexible and responsive. Extract A is a short interpretive passage by a constitutional scholar. Extract B is a short critical commentary from a political commentator. Use both extracts in your answer.

(Extracts) Extract A (constitutional scholar, 2010): 'The uncodified UK constitution permits steady, pragmatic adaptation. Where new circumstances arise Parliament can legislate quickly, judges can interpret existing rules and conventions can be adjusted by political actors. This elasticity has preserved stability across centuries.' **(30)**

Extract B (political commentator, 2024): 'Flexibility can be a cloak for uncertainty. When fundamental rules are changeable by simple majorities, rights and minority protections risk being eroded. Rapid legislative change can be used to bypass deeper debate, making the constitution reactive to political expediency rather than principled adaptation.'

Context: both extracts discuss the uncodified nature of the UK constitution and were written for a general audience in academic and journalistic outlets respectively.

(Total for Question 1 is 30 marks)

2 Evaluate the extent to which the UK constitution's uncodified nature is a strength.

(Total for Question 2 is 30 marks)

3 Analyse the extent to which statute law is the most important source of the UK constitution.

(Total for Question 3 is 12 marks)

Mark scheme · 2.2 The Nature and Sources of the UK Constitution

Question 1

(Extracts) **L1** Basic reference to the extracts with limited analysis. May summarise one extract without using the other, little or no evaluation and few, if any, contextual details. **1-6**

(Extracts) **L2** Some accurate analysis of the extracts, using both to identify clear supporting and challenging points about flexibility; limited evaluation and limited use of wider factual knowledge. **7-12**

(Extracts) **L3** Clear, developed analysis using both extracts and integrating relevant factual knowledge about sources of the constitution to show how uncodified features enable flexibility; includes lines of evaluation weighing support against challenge. **13-18**

(Extracts) **L4** Detailed analysis that uses precise reference to the extracts and shows how statute, common law, conventions and works of authority can make the constitution responsive. Strong evaluation that considers practical risks and provides specific examples, reaching a reasoned judgement. **19-24**

(Extracts) **L5** Sophisticated, sustained analysis that drives evaluation from the sources. Integrates accurate, well-chosen examples and constitutional theory to show nuanced reasons why flexibility is both a strength and a risk, and reaches a balanced, well-justified judgement about the overall claim. **25-30**

(Extracts) Indicative content:

- Use Extract A to show how uncodified features allow rapid legislative responses by Parliament, citing examples where statutes adapted constitutional practice.
- Explain how common law allows judges to fill gaps and develop principles, giving the constitution a dynamic character; reference judicial review and case law as mechanisms of adaptation.
- Show how conventions can be altered by political practice without legal reform, allowing practical change in areas where formal amendment would be difficult, and how works of authority guide such shifts in practice.
- Use Extract B to show the risk that ordinary statute law can be changed by a temporary majority, threatening rights and stability; give an example of where rapid parliamentary legislation created controversy over rights or procedural safeguards, described without covering post-1997 reforms.
- Analyse the tension between pragmatic adaptation and the potential erosion of protections, explaining how the lack of entrenchment makes flexibility double-edged.
- Evaluate the practical mechanisms that check flexibility, such as political accountability, judicial review, and reliance on conventions, and assess whether these are sufficient to prevent abuse.
- Conclude with a balanced judgement that flexibility promotes responsiveness and evolution but requires strong political norms and institutional checks to avoid opportunistic or destabilising constitutional change.

Question 2

Level 0 No relevant content. **0**

Level 1 Basic, limited knowledge of uncodified constitution with little or no analysis or evaluation. Statements are largely descriptive or assertional. **1-7**

Level 2 Clear knowledge of the uncodified constitution and some developed analysis of its strengths and weaknesses. Evaluation is present but may be one-sided or underdeveloped, with limited use of examples. **8-15**

Level 3 Detailed, accurate knowledge of features and sources of the uncodified constitution used to construct a sustained analysis. Evaluation weighs strengths against weaknesses and uses well-chosen examples; reaches a reasoned judgement. **16-23**

Level 4 Sophisticated, wide-ranging and accurate knowledge deployed in a tightly argued evaluation that directly addresses the extent of the claim. Uses precise examples and constitutional theory across AO1, AO2 and AO3 to reach a balanced, well-substantiated conclusion. **24-30**

Indicative content:

- Arguments that uncodified nature is a strength: flexibility and adaptability so constitution can evolve without formal amendment; ability for Parliament to respond quickly to new problems; interaction of multiple sources allows pragmatic solutions.
- Examples in support: statutes that have clarified constitutional arrangements when needed, judicial interpretation that evolves common law principles, and conventions adapting over time to political realities.
- Arguments that it is a weakness: lack of clarity for citizens and uncertainty over fundamental rules; vulnerability of rights and institutions to ordinary parliamentary majorities due to lack of entrenchment; potential for executive or majoritarian abuse when political norms erode.
- Examples illustrating weaknesses: occasions when rapid statutory change or political behaviour caused controversy about rights or procedures, and instances where conventions were tested and found fragile in political crisis, described without discussing reforms reserved for other packs.
- Evaluation of checks and balances: role of judicial review and the courts in interpreting law, political checks such as elections and parliamentary scrutiny, and the practical force of works of authority and conventions, assessing whether these sufficiently protect constitutional principles.
- Consideration of trade-offs: flexibility versus certainty, democratic responsiveness versus protection of minorities, and whether an uncodified system better suits the UK's political culture and historical constitutional development.
- Conclusion should reach a clear judgement on the extent to which uncodified nature is a strength, acknowledging that it can be both an asset and a liability depending on political context and the resilience of supporting institutions and norms.

Question 3

Level 0 No relevant content.	**0**
Level 1 Basic, limited knowledge of statute law as a source, with little analysis of its relative importance.	**1-3**
Level 2 Clear knowledge of statute law and at least one other source, with some developed analysis of why statute law might be more or less important.	**4-6**
Level 3 Detailed knowledge of statute law and other sources used to construct a well-developed analysis of its importance, including examples and some qualification.	**7-9**
Level 4 Wide-ranging, accurate knowledge applied to a sustained analysis that weighs evidence for and against statute law being the most important source and reaches a supported judgement.	**10-12**

Indicative content:

- Case for statute law being most important: parliamentary sovereignty makes Acts of Parliament supreme; major constitutional changes are normally effected by statute, for example the Human Rights Act 1998 or the Constitutional Reform Act 2005.
- Case for others being important: common law can protect rights and shape constitutional practice when statutes are silent, e.g. judicial development of prerogative limits in recent judicial review cases.
- Conventions matter politically despite lacking legal force; in practice they guide behaviour and can determine constitutionally significant outcomes, for example the conventions on Royal Assent and ministerial responsibility.
- Works of authority, such as Erskine May, guide parliamentary procedure and are frequently relied upon by MPs and clerks to interpret statute and practice, giving them practical constitutional force.
- A balanced judgement might argue statute law is legally supreme and therefore structurally the most important source, but in practice the constitution functions through an interaction of sources, so statutes often require support from conventions, common law and authoritative works to operate effectively.